

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NOS. 2003-326-C AND 2003-327-C – ORDER NO. 2003-730
DECEMBER 17, 2003

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| IN RE: Docket No. 2003-326-C – Analysis of |) | |
| Continued Availability of Unbundled Local |) | ORDER GRANTING |
| Switching for Mass Market Customers |) | MOTION FOR INITIAL |
| Pursuant to the Federal Communication |) | PROCEDURAL ORDER |
| Commission's Triennial Review Order |) | |
| |) | |
| and |) | |
| |) | |
| Docket No. 2003-327-C – Continued |) | |
| Availability of Unbundled High Capacity |) | |
| Loops at Certain Locations and Unbundled |) | |
| High Capacity Transport on Certain Routes |) | |
| Pursuant to the Federal Communication |) | |
| Commission's Triennial Review Order |) | |

This matter comes before the Public Service Commission of South Carolina ("Commission") upon the Joint Motion of BellSouth Telecommunications, Inc. ("BellSouth") and CompSouth¹ for an Initial Procedural Order. The Commission has determined that the Joint Motion should be granted and hereby adopts the following Initial Procedural Order.

¹ CompSouth is an association of competitive local exchange carriers, and CompSouth's members include: ITC^DeltaCom; MCI; NewSouth Communications Corp.; AT&T; Nuvox Communications, Inc.; ACCESS Integrated Networks, Inc.; Birch Telecom; Talk America; Cinergy Communications Company; Z-Tel Communications, Inc.; Network Telephone Corp.; Momentum Business Solutions, Inc.; Covad Communications Company; KMC Telecom; IDS Telecom, LLC; Access Point, Inc. and Xspedius Management Co., LLC.

(1) Service of Pleadings, Discovery and Responses, Testimony, Briefs and Other Required Filings.

All filings by the Parties to this proceeding and the service of said filings by Parties shall be made as follows:

- (i) All filings required to be made to the Commission shall be made pursuant to the ordinary rules of practice and procedure that apply to matters pending before the Commission, on the dates specified by the Commission and in the manner such filings are ordinarily made; provided, however, that unless the Commission specifically orders otherwise with regard to a particular filing or submission, the parties may hand deliver any required pleading to the Commission by 11 a.m. on the day following the date the filing was due, and provided that service on the other parties was made in accord with the requirements of this order, such filing shall be considered timely filed on the date the filing is due, and in accordance with Commission Rule 103-841.
- (ii) Every party to this proceeding shall provide every other party with an e-mail address of a person who shall be authorized to receive service copies for that party of all filings that have to be filed at the Commission or otherwise served on the parties. If the person authorized to receive service for any party changes, that party shall be responsible for notifying all other parties of such change. For any party who has already intervened in this proceeding and who has not provided such an e-mail address, such party shall do so promptly, and in no event less than 10 days following the date of this order. Failure to provide such an address shall excuse any party from any alleged failure to serve the party who has failed to provide the appropriate e-mail address.
- (iii) For the purpose of this proceeding, where a responsive submission is made, service shall be deemed complete when the person making the filing sends the filing to the appropriate e-mail address. For filings that require a responsive filing from other parties, such as interrogatories, requests for admission and requests for production of documents, the time for complying with the request shall begin when the party to whom the request is made receives the request; provided that if the filing is served electronically and is received after 4 p.m, the filing shall be treated as if it were served and received on the next business day following the date on which the electronic filing was received. The parties are admonished to (1) request "receipt" and "read" indicators for all e-mails to insure that they are delivered and received in a timely manner and (2) to insure that the person designated to receive service, or someone acting in his or her stead, can regularly access e-mail. Upon agreement of the parties, each

party may designate up to three persons to receive service to alleviate any concerns about the availability of someone to receive service.

- (iv) Because some filings, such as testimony, or the responses to filings such as interrogatories or responses to requests for production may be voluminous, the parties can elect, for non-confidential materials, to create a publicly accessible website where any such filing can be posted. If a party elects to post a responsive filing to this web site, and sends an e-mail with a URL link to that publicly accessible website to the appropriate representatives of the other parties, such a posting shall be considered service of the responsive document. This vehicle may be used for the posting of testimony and responses to discovery but shall not be used for the filing of matters that require a response from other parties, such as interrogatories, requests for admission or requests for the production of documents.
- (v) The purpose of providing for service in the foregoing ways is to facilitate the exchange of information between the parties so that this proceeding can go forward in a timely and efficient manner. Any disputes as to whether there has been compliance with these requirements should be discussed among the parties and resolved amicably if at all possible. Prior to bringing any dispute regarding these matters to the Commission, the parties will be required to certify that they have met and discussed the dispute and succinctly detail exactly what the dispute is. The Commission will not entertain disputes involving a question of whether a filing was made timely unless the aggrieved party can demonstrate that it has been substantially prejudiced.
- (vi) Where a party receives an electronic copy of a document, the party can request a paper copy of the document, but the responding party shall have one week after the request is made to furnish the paper copy.

(2) Discovery

- (A) Interrogatories, Requests to Produce Documents, Requests for Admissions.
 - (i) Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may be served requesting state-specific responses and information or, at a party's discretion, seeking responses and information concerning all nine states in the BellSouth region. It shall not be an appropriate or sustainable objection that such discovery seeks information concerning states other than the state in which the discovery is

served. Subject to the Protective Order in this docket (see, Order No. 2003-729) and any other evidentiary objections, discovery obtained in other states in the BellSouth region shall be available for use in this proceeding or where appropriate, in appeals from Commission orders to a court of competent jurisdiction or the Federal Communications Commission (“FCC”), subject to normal rules applying to the admission of evidence.

(ii) Where requested, the parties shall respond, except as provided below, to Interrogatories, Requests to Produce and Requests for Admissions within 30 calendar days of service.

(iii) If a party believes that a particular request is unduly voluminous or would otherwise require additional time to respond to (and the request is not otherwise objectionable), the parties are admonished to work together to agree on an appropriate time frame for responding to the discovery, given the circumstances that exist at the time. In resolving such issues, the parties are directed to consider whether the requests can be broken into smaller groups, with some groups being responded to more quickly than others, or whether there is some other innovative way to address such issues without bringing them to the Commission for resolution. Again, should a party seek the Commission’s intervention in such a dispute, the complaining party should be prepared to explain in detail why it has been unable to reach a satisfactory resolution and why it is prejudiced by the solution offered by the non-complaining party.

(iv) Objections to Discovery.

(a) Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery shall be made within 10 calendar days after service. To the extent that the requirements of this paragraph conflict with the South Carolina Rules of Civil Procedure, the requirements of this paragraph shall control, and the Commission specifically waives any applicable portions of Commission Rule 103-854 in order that this paragraph establish the proper rules for objections to discovery. Objections to Interrogatories, Requests to Produce Documents and Requests for Admissions and other Discovery may include, but not be limited to:

(1) Legal Objections

(2) Objections to the time required for the production of region-wide discovery responses, in which event the

objecting party shall provide a time frame and/or date certain for response to the region-wide discovery. Such objections may include the fact that certain discovery responses may be voluminous and/or require answers from individuals from multiple states.

- (b) Where objections are made pursuant to (2)(A)(iv) (a) (1), the objecting party shall state whether it intends to provide a partial response subject to the objection. Parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.
- (c) Where objections are made pursuant to (2)(A)(iv) (a) (2), the parties shall agree upon a time frame and/or date certain for responses, and the responding party will engage in its best efforts to respond as quickly as possible.
- (v) Pursuant to S.C. Code Ann. §58-3-60, the Commission hereby appoints the Executive Assistant to the Commissioners, or her designee, to resolve any discovery disputes that may arise in these proceedings, subject to being overruled by the Commission. Where the parties are unable to resolve a discovery dispute as outlined in the proceeding sections, the parties shall seek expedited rulings on any discovery dispute, and the Executive Assistant to the Commissioners, or her designee, shall resolve any such dispute expeditiously.
- (B) Depositions. For good cause shown and in recognition that waiver is in the public interest, the Commission hereby waives the provisions of Commission Rule 103-852 requiring that parties must ask the Commission for leave to take the testimony of any witness.
 - (i) Depositions of employees, consultants, contractors and agents may be taken pursuant to the South Carolina Rules of Civil Procedure, including any objections that may be raised. To the extent that Commission Rule 103-852 does not allow for the deposition of persons other than party witnesses, that rule is hereby waived.
 - (ii) Depositions of persons whom the parties will sponsor as witnesses in the above-styled Docket shall be limited as follows, after testimony is filed:
 - (a) Any party may depose a person who files testimony, subject to (2)(B)(ii)(b) below, after the filing of:

- (1) direct testimony; and
 - (2) rebuttal testimony; and
 - (3) surrebuttal testimony
- (b) Once a witness has been deposed regarding such testimony in any state in the BellSouth region, that witness may only be deposed again (1) upon the request of the staff of the Commission, or if there is participation by a public agency such as a consumer advocate or the Attorney General, upon request by such public agency, or (2) any party to this proceeding that was not a party to the proceeding in which the deposition was taken, or (3) by any party, if the testimony offered by the witness contains state specific information which is different from previous testimony filed by the witness, in which case the deposition will be limited to questions about the state specific material and related items.
- (c) Should a witnesses' testimony in this state change materially, other than by reason of the inclusion of state specific material discussed in (b) above, the witness may be deposed again, but only in connection with the testimony that has changed.
- (d) The purpose of these deposition requirements is to conserve the resources of the parties and to encourage the parties to work jointly and cooperatively to conduct necessary discovery.
- (e) If the parties have a dispute regarding the taking of depositions in any particular situation, the parties are admonished to work together to resolve such differences, and if those differences cannot be reconciled, the parties should be prepared to present a very brief explanation of the dispute and the aggrieved party should be prepared to demonstrate how it is prejudiced by its failure to comply with the requests or objections of the opposing party.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Deputy Executive Director

(SEAL)